

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Nancy J. Birch

CASE NO. 04-60740 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: The Debtor, Nancy J. Birch, Debtor's Attorney, Alan B. Fish, Trustee, David G. Velde, U.S. Trustee and other interested parties as shown on the attached service list.

1. Green Tree Loan Company f/k/a Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corp. (hereinafter "Green Tree"), by its undersigned attorney, moves the court for the relief requested below and gives notice of hearing herewith.

2. The court will hold a hearing on this motion on September 28, 2004 at 1:00 p.m. or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom No. 2 at the U.S. Bankruptcy Court, 205 U.S. P.O. Building, 118 South Mills Street, Fergus Falls, MN 56537.

3. Any response to this motion must be filed and delivered not later September 23, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays of holidays) or filed and served by mail not later than September 17, 2004, which is seven (7) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Fed. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on June 21, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. 362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief with respect to property subject to Green Tree's valid security interest.

6. The Movant hereby requests that the Court waive the ten-day stay period provided for by Bankruptcy Rule 4001(a)(3).

7. That Green Tree is entitled to lift the stay and seek the immediate possession of certain personal property that is described as follows:

1998 Skyline, 16' x 76', Manufactured Home, Spring Cove Model, Serial No. 63301024K, including but not limited to stove, refrigerator, washer, dryer, air conditioner, wheels/axles, skirting, steps and dishwasher

8. That cause exists, including lack of adequate protection of the interest of Green Tree in the subject property, entitling Green Tree to relief from stay.

9. That the Debtor has no equity in the property and the property is not necessary to an effective reorganization.

10. Green Tree desires to protect its interest in the aforementioned property and requests the court to vacate the stay of actions and allow repossession pursuant to Minnesota Statutes.

11. The Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Green Tree, by its undersigned attorney, moves the court for an order for judgment that the automatic stay provided by 11 U.S.C. Sec. 362(a) and be terminated so to permit the movant to enforce its interest in the mobile home under applicable Minnesota law and for such other relief as may be just and equitable.

Dated this 16th day of August, 2004.


STEPHENSON & SANFORD PLC

By: /e/ Theresa A. Hodnett
Theresa A. Hodnett
Attorney ID # 026832X
Attorneys for Secured Creditor
Suite 220
1905 East Wayzata Blvd.
Wayzata, MN 55391
(952) 404-2100

VERIFICATION

I, Tina Gaikowski, the bankruptcy administrator of Green Tree Loan Company f/k/a Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corp. named in the foregoing notice of hearing and motion, declare under penalty of perjury the that foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8-4-04

Signed: 
Tina Gaikowski

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Nancy J. Birch

CASE NO. 04-60740 DDO

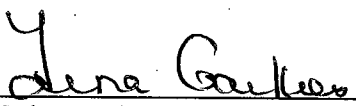
Debtor.

AFFIDAVIT OF TINA GAIKOWSKI

Tina Gaikowski, being first duly sworn on oath deposes and states:

1. That Affiant is the Bankruptcy Administrator for Green Tree Loan Company f/k/a Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corp. ("Green Tree").
2. That Affiant has reviewed the account records relating to Nancy J. Birch and the Manufactured Home Retail Installment Contract and Security Agreement loan account.
3. That on or about September 17, 1998, the Debtor Nancy J. Birch and non-filing co-debtor Walter V. Birch, executed a Manufactured Home Retail Installment Contract and Security Agreement with Mesabi Homes of Virginia, Inc. for a 1998 Skyline, 16' x 76', Manufactured Home, Spring Cove Model, Serial No. 63301024K, including but not limited to stove, refrigerator, washer, dryer, air conditioner, wheels/axles, skirting, steps and dishwasher, which is attached hereto as **Exhibit A**.
4. That Seller's interest in the aforementioned Manufactured Home Retail Installment Contract and Security Agreement was assigned to Claimant, Green Tree. A true and correct copy of the Confirmation of Lien Perfection is attached hereto as **Exhibit B**.
5. That said Manufactured Home Retail Installment Contract and Security Agreement provides that failure to remit the monthly payment is a condition of default, the occurrence of which gives Green Tree the right to accelerate the contract and repossess the property.
6. That Debtor failed to maintain monthly payments under said contract.
7. That the Debtor defaulted by virtue of Debtor's failure to remit the monthly payments for April (\$350.80), May (\$350.90), June (\$350.90), July (\$350.90), and August (\$350.90) 2004. The total default is \$1,754.40.
8. That the approximate N.A.D.A. market value of said collateral is \$20,500.00.

9. That as of July 27, 2004, the net balance due on the contract is \$36,464.09.
10. That cause exists, including lack of adequate protection, as evidenced by the failure to pay under the contract, of the interest of Green Tree in the subject property, entitling Green Tree to relief from stay from Debtor, Nancy J. Birch.
11. That the last known address of Debtor is as follows:
- 58633 County Road 13
Lot 117
Warroad, MN 56763
12. That Green Tree believed and still believes that the aforementioned address was and still is the present residence of Debtor because Debtor had previously advised Green Tree of the same and because Green Tree has communicated with Debtor at said address and has no reason to believe that the Debtor no longer resides there.
13. That Debtor has no equity in the property and the property is not necessary to an effective reorganization.
14. Green Tree desires to protect its interest in the aforementioned property and requests the court to vacate the stay of actions and allow repossession pursuant to Minnesota Statutes.
15. The Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.
16. This affidavit is given in support of the motion of Green Tree, for relief from the automatic stay.



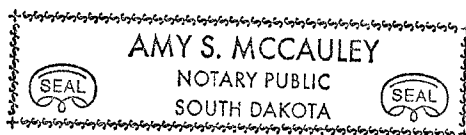
Tina Gaikowski

Subscribed and sworn to before me
this 4th day of August, 2004.



Notary Public

MY COMMISSION EXPIRES 3/07/07



EXHIBIT

A

QT-10-24-101 (4/95) MH-WC

MINNESOTA

MANUFACTURED HOME RETAIL INSTALLMENT CONTRACT
AND SECURITY AGREEMENT (CONV. - FHA - VA) (SI)

Date

9/17/98

DISBURSEMENT DATE: 9/18/98

ACCOUNT # 30325951

BUYER: BIRCH, NANCY J.
BIRCH, WALTER V., LOT 43, LAKEWOOD MHP, WARROAD, MN 56763

SELLER: NESABI HOMES OF VIRGINIA, INC., NCO 2 BOX 496, WARROAD, MN 56763

ASSIGNEE: GREEN TREE FINANCIAL SERVICING CORPORATION, 325 CEDAR STREET, SUITE 700, ST PAUL, MN 55101

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURES

ANNUAL PERCENTAGE RATE (The cost of my credit as a yearly rate.)	FINANCE CHARGE (The dollar amount the credit will cost me.)	Amount Financed (The amount of credit pro- vided to me or on my behalf.)	Total of Payments (The amount I will have paid after I have made a payments as scheduled.)	Total Sale Price (The total cost of my pur- chase on credit, including my down payment of \$ 1850.00)
11.75 %	\$ 91663.00	\$ 34763.00	\$ 126324.00	\$ 128174.00

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
360	\$50.90	Monthly beginning Nov/1/98

SECURITY: I am giving a security interest in:

☒ The goods or property being purchased. Real property located at _____
FILING FEES: \$ 13.00 LATE CHARGE: If a payment is more than 15 days late, I will be charged \$.00 or .00 %

of the payment, whichever is LESS

PREPAYMENT: If I pay off early, I will not be charged a prepayment penalty.

ASSUMPTION: Someone buying my home may, subject to conditions, be allowed to assume the remainder of the Contract on the original terms.

See the Contract document below for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE AMOUNT FINANCED

1. Cash Sale Price (including Taxes of)	\$.00	\$ 36600.00
2. Gross Trade-in	\$.00	
Less Amount Owed on Trade-in	\$.00	
Net Trade-in	\$.00	
Description: Make _____ Year 8000 Size 00 X 00		
3. Cash Down Payment	\$ 1850.00	
4. Total Down Payment	\$ 1850.00	
5. Unpaid Balance of Cash Sale Price (1 - 4)	\$ 34750.00	
6. Paid to Public Officials	\$.00	
7. Paid to Insurance Companies	\$.00	
8. Paid to Appraiser	\$.00	
9. a. Paid to _____	\$.00	
b. Paid to _____	\$.00	
c. Paid to _____	\$.00	
d. Paid to _____	\$.00	
e. Paid to _____	\$.00	
f. Paid to _____	\$.00	
g. Paid to _____	\$.00	
10. Principal Balance (5 - 6 + 7 + 8 + 9 a - g)	\$ 34763.00	
11. Prepaid Finance Charges	\$.00	
12. Amount Financed (10 - 11)	\$ 34763.00	

PHYSICAL DAMAGE INSURANCE

Physical Damage Insurance is required but I may obtain it from anyone I want that is acceptable to you. If I get the insurance checked below from you or through you, I will pay you

\$.00 for insurance protection for a term of 00 years.

N/A Comprehensive is .00 deductible

Flood _____

N/A Liability _____

N/A Other _____

N/A Vendor's Single Interest _____

OPTIONAL CREDIT LIFE
AND DISABILITY INSURANCE

Credit Life and Disability Insurance are not required to obtain credit and will not be provided unless I sign and agree to pay the additional cost.

The term of this insurance is 00 years.

N/A Single Credit Life Insurance	\$.00
N/A Joint Credit Life Insurance	\$.00
N/A Single Credit Disability Insurance	\$.00
Total	\$.00

☒ Signature of Buyer(s) Insured

Date

CONTRACT AND SECURITY AGREEMENT

1. DEFINITIONS: "I", "me", "my" means the Buyer(s). "You", "your" means the Seller and also the Assignee (after the Contract is assigned by Seller). "Manufactured Home" means the manufactured home and any other property described below and on page 2. "Contract" or "Agreement" means this Retail Installment Contract and Security Agreement.

NEW OR USED	YEAR AND MAKE	MODEL	SERIAL NUMBER	SIZE
N	1998 SKYLINE	LEAKENHORN	63381024K	36 X 76

Bancroft & Co., Inc. St. Cloud, MN 56301-2201 Form 37-MHRCIA25MN 6/22/95 ORIGINAL

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☒ Stove ☒ Refrigerator ☒ Washer ☒ Dryer ☒ Air Conditioner ☒ Wheels/Axles

Other (Describe) SKIRTING, STEPS, DISHWASHER

2. **PURCHASE:** I have the option of buying the Manufactured Home for the cash price or buying on credit. The cash price is shown on page 1 as the "Cash Sale Price", and the credit price is shown on page 1 as the "Total Sale Price". I choose to buy on credit.

3. **SECURITY INTEREST:** I give you a security interest under the applicable certificate of title law or Uniform Commercial Code in the Manufactured Home and any property added or attached to it, to secure my obligation under this Contract. I also grant you a security interest in any interest I may have in premium refunds or proceeds under any insurance covering the Manufactured Home. I agree to execute any application for certificate of title or ownership, financing statement or other document necessary to perfect your security interest in the Manufactured Home. To the extent, if any, that any Contract (whether or not acknowledged by any one or more original) constitutes chattel paper (as such term is defined in the Uniform Commercial Code in effect in the applicable jurisdiction) no security interest in any Contract may be created in any document(s) other than the original.

4. **PAYMENTS AND LATE CHARGE:** I will pay you the amount shown as the "Total of Payments" according to the payment schedule shown on page 1. I also agree to pay a late charge for late payment as shown on page 1.

5. **PREPAYMENT: I HAVE THE RIGHT TO PREPAY ALL OR PART OF THE UNPAID BALANCE OF THIS CONTRACT WITHOUT ANY PENALTY.**

6. **SIMPLE INTEREST CONTRACT:** This is a simple interest contract. The interest rate is 11.75% per annum until paid in full. Interest will accrue upon the unpaid principal balance outstanding from time to time. The Finance Charge, Total of Payments and Payment Schedule were computed based on the assumption that payment will be made on the dates scheduled for payment. Early payments will reduce my final payment. Late payments will increase my final payment. My final payment will be equal to all unpaid sums due under this Contract. My promise requires me to pay the final payment on the date due even if the amount of the final payment differs from the amount of the final payment disclosed.

7. **NO WARRANTIES:** I agree that there are no warranties of any type covering the Manufactured Home. I am buying the Manufactured Home AS IS and WITH ALL FAULTS and THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE MANUFACTURED HOME IS WITH ME. I agree that any implied warranty of merchantability and any implied warranty of fitness for a particular purpose are specifically excluded and do not cover the Manufactured Home. This No Warranties provision does not apply to the extent that any law prohibits it and it does not cover any separate written warranties.

8. **PROTECTION OF THE MANUFACTURED HOME:** I will: (a) keep the Manufactured Home in good condition and not commit waste; (b) pay all taxes, charges and/or rent due for the Manufactured Home and the real estate it is located on; (c) not move, use illegally, sell, lease or otherwise transfer the Manufactured Home; (d) not attach the Manufactured Home to any real estate and the Manufactured Home will always be treated as personal property unless you consent in writing and state law permits such contrary treatment; and (e) not let anybody else have any interest in the Manufactured Home.

9. **INSURANCE:** I will keep the Manufactured Home insured against such risks and in such amounts as you may reasonably require with an insurance company satisfactory to you. I will arrange for you to be named as loss payee on the policy. I agree to provide you written evidence of insurance as requested by you from time to time. If you finance the purchase of any such insurance for me, I will repay you for the cost of that insurance, plus interest up to the contract rate of interest. I agree that the insurance company may make any payments due under the policy directly to you, and I direct the insurance company to do so. You may do whatever you think is necessary to be sure that any proceeds of the insurance will be used to repair the Manufactured Home or pay off this Contract. I give you a power of attorney (which I cannot cancel) so that you may do whatever you need to in order to collect the insurance proceeds. If I fail to obtain, maintain or pay for the required insurance, or if I fail to arrange for you to be named as loss payee, you may treat that as a default of my obligations under this Contract, and you may (but are not required to) purchase such insurance. If you purchase such insurance, I will immediately repay you for any amounts you spend in purchasing the insurance, plus interest up to the contract rate of interest or, at your option, pay you over time as a workout of the obligation. If I owe you for any insurance for late charges, attorney fees or collection costs, I understand that I owe an additional sum for these debts beyond my monthly principal and interest payment. My monthly payment will therefore be greater than that stated on page 1 until such additional debts are paid in full.

10. **DEFAULT:** I will be in default if: (i) I do not make a payment on time; or (ii) I do not keep any of my other promises under this Contract; or (iii) I file a case, or someone else files a case against me, under the United States Bankruptcy Code; or (iv) you feel in good faith that the Manufactured Home is in danger or that I will not be able to continue my payments. The default described under (iv) does not apply if this Contract is guaranteed by the Veteran's Administration. You will give me notice of the default except when I voluntarily surrender or abandon the Manufactured Home. I will have the right to cure the default during the notice period. If I do not cure the default, you may do either or both of the following: (a) Acceleration: You can require me to immediately pay you the entire remaining balance of this Contract; and/or (b) Repossession: You can repossess the Manufactured Home. Once you get possession of the Manufactured Home you may sell it. If the amount from the sale, after expenses, is less than what I owe you, I will pay you the difference. If there is any property left in the Manufactured Home when you repossess, you may dispose of it as provided by law. If I default, you can do whatever is necessary to correct my default. If you spend money to correct my default, I will pay you back immediately with interest at the contract rate of interest.

11. **NOTICE:** Except for any notice required under applicable law to be given in another manner, (a) any notice to me provided for in this Contract shall be given in writing by mailing such notice by certified mail, addressed to me at the Manufactured Home address or at such other address as I may designate by notice to you in writing, and (b) any notice to you shall be given in writing by certified mail, return receipt requested, to your address stated herein or to such other address as you may designate by notice to me in writing.

12. **ATTORNEY'S FEES:** If you hire an attorney who is not a salaried employee to collect what I owe under this Contract or to get possession of the Manufactured Home or to enforce my agreements herein, I may be required to pay you a reasonable attorney's fees plus court costs and actual out-of-pocket expenses. If state law provides for a limit on attorney's fees, I will pay only the legal limit.

13. **MISCELLANEOUS PROVISIONS:** This written Contract is the only agreement that covers my purchase of the property. This Contract can only be modified or amended, or provisions in it waived (given up), by a written modification to this Contract signed by you. You can decide not to use or enforce any of your rights under this Contract without losing them. For example, you can extend the time for making some payments without extending others. If any part of this Contract cannot be enforced because of a law which prohibits it, all other parts can still be enforced. I agree to pay you all allowable charges for the return by a depository institution of a dishonored check or other negotiable instrument to the full extent provided by applicable law. I agree to cooperate with you regarding any requests after closing to correct errors made concerning this Contract or the transaction and to provide any and all additional documentation deemed necessary by you to complete this transaction.

14. **ARBITRATION:** All disputes, claims or controversies arising from or relating to this Contract or the parties thereto shall be resolved by binding arbitration by one arbitrator selected by you with my consent. This agreement to arbitrate a transaction in interstate commerce and shall be governed by the Federal Arbitration Act at 9 U.S.C. Section 1. Judgment upon the award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right to litigate disputes in court, but that they prefer to resolve their disputes through arbitration, except as provided herein. **THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY YOU (AS PROVIDED HEREIN).** The parties agree and understand that all disputes arising under state law, statutory law and all other laws

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including, but not limited to, all contract, tort and property disputes will be subject to binding arbitration in accord with this Contract. The parties agree that the arbitrator shall have all powers provided by law, the Contract and the agreement of the parties. These powers shall include all legal and equitable remedies including, but not limited to, money damages, declaratory relief and injunctive relief. Notwithstanding anything herein to the contrary, you retain an option to use judicial (filing a lawsuit) or non-judicial relief to enforce a security agreement relating to the Manufactured Home secured in a transaction underlying this arbitration agreement. The institution and enforcement of the monetary obligation secured by the Manufactured Home or to foreclose on the Manufactured Home. The institution and maintenance of a lawsuit to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this Contract, including the filing of a counterclaim in a suit brought by you pursuant to this provision.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BUYER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS CONTRACT.

X Walter V. Birch
Signature of Buyer WALTER V. BIRCH

X Nancy J. Birch
Signature of Buyer NANCY J. BIRCH

ASSIGNMENT BY SELLER

Seller hereby assigns and transfers its entire right, title and interest in the Contract and the property described therein (the "Property") to Assignee. To induce Assignee to purchase the Contract, Seller warrants that: (a) the Contract and Guaranty, if any, are genuine, legally valid and enforceable and arose from the sale of the Property; (b) the Contract is subject to no defenses, counterclaim or setoff; (c) copies of the Contract and all other documents signed by the Buyer(s) were given to the Buyer prior to consummation; (d) Seller has complied with all applicable federal, state and local laws, regulations, rules and ordinances; (e) the Buyer is not a minor and has legal capacity to execute this Contract; (f) the Property is free and clear of all liens and encumbrances except the security interest granted herein and Seller has the right to assign its interest in the Contract; (g) the security interest granted to Seller constitutes a valid first lien on the Property and has been filed or recorded according to law; (h) the down payment shown on the face hereof has been received and no part thereof was advanced directly or indirectly by Seller to Buyer; (i) all statements of fact made in the Contract and all statements made by or on behalf of the Buyer in the credit applications and any other forms relating to the Contract are true to the best of Seller's knowledge and belief; (j) Buyer has physical damage insurance in the amount of the loan approval and funding. This is a condition to Assignee funding the Contract. If there is a breach of any of the foregoing warranties, as solely determined by Assignee, without regard to the Seller's knowledge with respect thereto or Assignee's reliance thereon, Seller agrees unconditionally to repurchase the Contract from Assignee, upon demand, for the full amount then unpaid plus costs and expenses incurred by Assignee (such as court costs, attorneys' fees, and unpaid interest), whether the Contract shall then be, or not be, in default, and to indemnify, defend and hold Assignee harmless from any loss, damages or claims of any nature by reason of such breach of warranty, including attorneys' fees, court costs, disbursements and out-of-pocket expenses.

Seller further agrees that in the event Buyer asserts against Assignee any claim, defense or counterclaim against payment of any sum owing under the Contract or in defense of repossession on the assertion, either oral or written, that the Property is defective, not as represented to Buyer by Seller or that Seller refuses to honor any warranty or service agreement of Seller or the manufacturer, Seller will, upon Assignee's demand, repurchase the Contract from Assignee and pay Assignee the full amount remaining unpaid (plus accrued and unpaid interest) plus Assignee's costs and expenses including attorneys' fees, whether or not any such claim, defense or counterclaim shall be meritorious and without awaiting adjudication of Buyer's claim, defense or counterclaim; and Seller also agrees to indemnify, defend and hold Assignee harmless from any such claims, including attorneys' fees, court costs, disbursements and out-of-pocket expenses.

The liability of Seller shall not be affected by any extension, renewal or other change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for payment thereof, or the release or non-perfection of any security thereunder. Assignee shall not be bound to exhaust its recourse against Buyer or any other person or any security before being entitled to payment by the Seller hereunder. Seller waives notice of acceptance of this Assignment and notices of nonpayment and nonperformance of the Contract and any other notices required by law and waives all setoffs and counterclaims.

In addition, this Assignment includes that certain provision to follow, provided that, if none of the following provisions has been checked by the Seller, this Assignment shall be considered to have been checked "With Recourse": A. "Without Recourse". The assignment of the Contract is and shall be without recourse against the Seller except as provided above and in any separate dealer agreement between Seller and Assignee relating to the purchase of Contracts. B. "Limited Recourse". In the event of default of Buyer before Buyer shall have paid the number of monthly payments under the Contract as set forth below under "Limited Recourse", the Seller will, upon demand, repurchase the Contract from Assignee for the full amount remaining unpaid under the Contract. C. "Repurchase". If the Assignee repossesses the Manufactured Home, the Seller will, upon demand, repurchase the Contract from the Assignee for the full amount remaining unpaid under the Contract. D. "With Recourse". The Seller unconditionally guarantees payment of the full amount remaining unpaid under the Contract and agrees to purchase the Contract from the Assignee, upon demand, for the full amount then unpaid, whenever the Contract shall be in default. E. "Limited Repurchase". In the event of default of Buyer before Buyer shall have paid the number of monthly payments under the Contract as set forth below under "Limited Repurchase", the Seller will, upon demand, repurchase the Contract from the Assignee for the full amount remaining unpaid under the Contract if the Assignee repossesses the Manufactured Home.

Seller, by signing below, executes this Contract and also assigns the same to the Assignee in accordance with the foregoing provisions. The Seller's Assignment will also include that certain provision set forth above which is checked below:

MESABI HOMES OF VIRGINIA, INC.
By: X Paul McFarlane (Seller) Title: Sales Mgr
☐ A. Without Recourse ☐ B. Limited Recourse ☐ C. Repurchase ☐ D. With Recourse ☐ E. Limited Repurchase
 _____ Payments



MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

BIRCH WALTER VINCENT
BIRCH NANCY JEAN
LOT 43 LAKEWOOD MHP
WARROAD MN 56763

98 Year	SKYL Make	MH Model	M3440K044 Title NFL
63301024K VIN		09/18/98 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

30325951

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

1ST SECURED PARTY

LIEN HOLDER

GREEN TREE FINANCIAL CORP
325 CEDAR ST STE 700
SAINT PAUL MN 55101-1012

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Nancy J. Birch

CASE NO. 04-60740 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF MOTION
FOR RELIEF FROM AUTOMATIC STAY**

FACTS

On or about September 17, 1998, Debtor Nancy J. Birch and non-filing co-debtor Walter V. Birch, executed a Manufactured Home Retail Installment Contract and Security Agreement with Mesabi Homes of Virginia, Inc. for the purchase of a 1998 Skyline, 16' x 76', Manufactured Home, Spring Cove Model, Serial No. 63301024K, including but not limited to stove, refrigerator, washer, dryer, air conditioner, wheels/axles, skirting, steps and dishwasher. The Seller's interest in the above-described contract was assigned to the movant, Green Tree Loan Company f/k/a Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corp. ("Green Tree"). The contract provides that the failure to remit the monthly payment is a condition of default, the occurrence of which gives Green Tree the right to accelerate the contract and repossess the property.

On or about June 21, 2004, Debtor filed for relief under Chapter 7 of Title 11, U.S. Code. Debtor is currently in default for the monthly payments for April (\$350.80), May (\$350.90), June (\$350.90), July (\$350.90), and August (\$350.90) 2004. The total default under the contract is \$1,754.40. Debtor has failed to reaffirm the debt. The market value of the mobile home is approximately \$20,500.00. As of July 27, 2004, the net balance due on the contract is \$36,464.09.

LAW

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. SECTION 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

On request of a party in interest and after notice and hearing the court shall grant relief from the stay for cause, including the lack of adequate protection of an interest in the property of such party in interest. 11 U.S.C. 362(d)(1). Pursuant to 11 U.S.C. Section 362(g) the burden is on the Debtor to prove the absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where:

1. Debtor filed Chapter 7 Bankruptcy on or about June 21, 2004.
2. The Debtor is delinquent for monthly contract installment payments for the months of April (\$350.80), May (\$350.90), June (\$350.90), July (\$350.90), and August (\$350.90) 2004, totaling \$1,754.40.
3. The Debtor has failed to reaffirm the debt with Green Tree.
4. The mobile home continues to depreciate in value.
5. The Debtor has failed to make any offer of adequate protection.

Accordingly, Green Tree is entitled to relief from the stay by reason of lack of adequate protection of its interest in the mobile home.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) WHERE (1) THE DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under Section 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The current N.A.D.A. valuation of the property is approximately \$20,500.00. It is subject to Secured Creditor's interest in a net amount of \$36,464.09. Effective reorganization is not at issue in this Chapter Seven case.

CONCLUSION

The Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. The Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(2) where the Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

The Secured Creditor has met its burden as discussed above and respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 16th day of August, 2004.

STEPHENSON & SANFORD PLC

By: /e/ Theresa A. Hodnett

Theresa A. Hodnett

Attorney ID # 026832X

Attorneys for Secured Creditor

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(952) 404-2100

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Nancy J. Birch

CASE NO. 04-60740 DDO

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Mary Petersen of Stephenson & Sanford, PLC, attorneys licensed to practice law in this court, with office address at Suite 220, 1905 East Wayzata Boulevard, Wayzata, Minnesota, declares under penalty of perjury that on the 16th day of August, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief from Automatic Stay, Affidavit of Tina Gaikowski and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Wayzata, Minnesota addressed to each of them as follows:

Nancy J. Birch
58633 County Road 13, Lot 117
Warroad, MN 56763

Walter V. Birch
709 Westside Trailer Court
Warroad, MN 56751

Alan B. Fish
109 2nd Street NE
Roseau, MN 56751

David G. Velde
1118 Broadway
Alexandria, MN 56308

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of August, 2004.

/e/ Mary Petersen

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Nancy J. Birch

CASE NO. 04-60740 DDO

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Green Tree Loan Company f/k/a Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corp., pursuant to 11 U.S.C. Section 362 on September 28, 2004 at U.S. Bankruptcy Court, 205 U.S. P.O. Building, 118 South Mills Street, Fergus Falls, MN 56537. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Green Tree Loan Company f/k/a Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corp., its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. 362 with regard to that certain Manufactured Home Retail Installment Contract and Security Agreement dated September 17, 1998, executed by Debtor Nancy J. Birch and non-filing co-debtor Walter V. Birch, covering a 1998 Skyline, 16' x 76', Manufactured Home, Spring Cove Model, Serial No. 63301024K, including but not limited to stove, refrigerator, washer, dryer, air conditioner, wheels/axles, skirting, steps and dishwasher; and may proceed to foreclose said security interest in accordance with Minnesota law.

Notwithstanding Fed. R. Bankr. P. 4001 (a)(3), this order is effective immediately.

DATED: _____

BY THE COURT:

The Honorable Dennis D. O'Brien
United States Bankruptcy Court Judge